

AMENDED IN ASSEMBLY AUGUST 30, 2013

AMENDED IN ASSEMBLY AUGUST 26, 2013

AMENDED IN ASSEMBLY AUGUST 6, 2013

AMENDED IN ASSEMBLY JUNE 17, 2013

AMENDED IN SENATE MAY 20, 2013

AMENDED IN SENATE APRIL 10, 2013

SENATE BILL

No. 360

Introduced by Senator Padilla

February 20, 2013

An act to amend Section 19100 of, to amend the heading of Article 1 (commencing with Section 19200) of Chapter 3 of Division 19 of, to amend the headings of Chapter 3 (commencing with Section 19200) and Chapter 3.5 (commencing with Section 19260) of Division 19 of, to amend the heading of Division 19 (commencing with Section 19001) of, to amend and renumber Sections 19103, 19200.5, 19202, 19203, 19204, 19207, 19209, 19210, 19211, 19212, 19212.5, 19213, 19214, 19214.5, 19215, 19216, 19217, 19220, 19221, 19222, 19223, 19225, 19226, 19227, 19227.5, 19228, 19229, 19229.5, 19230, 19231, 19232, 19233, 19234, 19234.5, 19235, 19236, 19237, 19238, 19239, 19240, 19241, 19242, 19243, 19244, 19245, 19250, 19251, 19252, 19253, 19254, 19255, 19260, 19261, 19262, 19263, 19264, 19267, 19269, 19270, 19271, 19272, 19273, 19274, and 19275 of, to amend and renumber the headings of Article 2 (commencing with Section 19220), Article 2.5 (commencing with Section 19225), Article 3 (commencing with Section 19230), and Article 4 (commencing with Section 19250) of Chapter 3 of Division 19 of, to amend, renumber, and add Sections 19101, 19102, and 19201 of, to add Sections 19006, 19282, 19283, and

19286 to, to add Article 2 (commencing with Section 19220) to Chapter 3 of Division 19 of, to repeal Sections 19205, 19208, 19265, 19266, and 19268 of, and to repeal and add Section 19206 of, the Elections Code, relating to voting systems.

LEGISLATIVE COUNSEL'S DIGEST

SB 360, as amended, Padilla. Certification of voting systems.

(1) Existing law establishes various procedures and criteria for the approval by the Secretary of State of voting systems, including ballot marking systems, to be used in elections.

This bill would recast and revise those provisions by changing the term “approval” to the term “certification” and would authorize the Secretary of State to certify, conditionally approve, as specified, or withhold approval of a voting system. The bill would provide that it is the intent of the Legislature that a local jurisdiction be authorized to use available public funds to research and develop a nonproprietary voting system, as specified, for use in a pilot program or for submission to the Secretary of State, and that the Secretary of State certify all voting systems before they are used in future elections, adopt and publish testing standards, and encourage the development of voting systems that are easy to audit. The bill would require the Secretary of State to adopt and publish voting system standards and regulations, as specified, and would require the Secretary of State to study the performance of the voting systems in use in the state.

This bill would additionally require the Secretary of State to publish requirements for the approval of state-approved testing agencies, as defined, that are authorized to conduct the testing and examination of voting systems and to approve and publish a list of authorized testing agencies. The bill also would provide that the person, corporation, or public agency applying for certification of a voting system is responsible for all costs associated with the testing of the voting system.

(2) Existing law prohibits the use of a voting system unless it has received the approval of the Secretary of State, as specified.

This bill would provide that a voting system that has been tested and approved for use in all elections by the Secretary of State before January 1, 2014, would be deemed to be certified or conditionally approved by the Secretary of State and would be authorized for use in elections, as specified. The bill would authorize a vendor or county that has submitted a voting system for federal qualification before August 1, 2013, to

request approval of the voting system from the Secretary of State, as specified. The bill also would prohibit a jurisdiction from purchasing or contracting for a voting system unless the voting system has been certified or conditionally approved by the Secretary of State, except as specified. The bill would further authorize the Secretary of State to grant conditional approval to a voting system or part of a voting system under specified circumstances.

(3) Existing law provides that a person or corporation owning or being interested in a voting system or a part of a voting system may apply to the Secretary of State to examine it and report on its accuracy and efficiency to fulfill its purpose. As part of its application, existing law requires the vendor of a voting system or the part of a voting system to notify the Secretary of State in writing of any known defect, fault, or failure of the version of the hardware, software, or firmware of the voting system or a part of the voting system submitted, and the Secretary of State is required to notify the United States Election Assistance Commission or its successor entity of the problem as soon as practicable so as to present a reasonably complete description of the problem, as specified.

This bill would delete the requirement that the Secretary of State notify the United States Election Assistance Commission or its successor entity of any known defect, fault, or failure of the version of the hardware, software, or firmware of the voting system or a part of the voting system submitted by the applicant.

(4) Existing law requires the Secretary of State to provide for a 30-day public review period and conduct a public hearing prior to publishing his or her decision to certify, conditionally approve, or withhold certification of a voting system, part of a voting system, or a ballot marking system. Under existing law, the Secretary of State is required to transmit notice of the hearing at least 30 days prior to the public review period and hearing, as specified.

This bill would instead require the Secretary of State to transmit notice of the hearing at least 14 days prior to the public review period and hearing.

(5) Within 30 days after completing the examination of any voting system, existing law requires the Secretary of State to file a report stating whether the voting system can safely be used, as specified.

This bill would instead require the Secretary of State to file a report within 60 days after the completion of the examination of the voting system, as specified.

(6) Existing law authorizes a governing board to adopt any kind of voting system, any combination of voting systems, or any combination of a voting system and paper ballots for use at elections, as specified. Provisions of existing law authorize the use of the voting systems at any or all elections held in any county, city, or any of their political subdivisions for voting, registering, and counting votes cast, and prohibit candidates for a single office from being split between voting systems or between a voting system and paper ballots.

This bill would delete those provisions.

(7) Existing law authorizes a governing board to provide for the experimental use of a voting system in one or more precincts without formally adopting the system and provides that the experimental use of the system at the election is valid for all purposes as if it were lawfully adopted.

This bill would authorize a governing board to conduct a pilot program for the experimental use of voting systems, as specified, and would require the Secretary of State to adopt and publish regulations governing voting system pilot programs. No later than 9 months before the election at which a pilot program is proposed to be conducted, the bill would require the governing board to submit to the Secretary of State a plan for the proposed pilot program, and would require the Secretary of State to approve or reject the plan within 3 months of receipt of the plan. The bill would require votes cast on a voting system during a pilot program, as specified, to be subject to risk-limiting audits, as defined. Upon completion of the pilot program, the bill would require the governing board to notify the Secretary of State in writing of any defect, fault, or failure in the hardware, software, or firmware of the voting system.

(8) Upon examination of a voting system or a ballot marking system, existing law provides that if a report is issued that states that the voting system or ballot marking system can be used, it is deemed approved by the Secretary of State for use at elections.

This bill would delete the above provision and would make conforming changes.

(9) The Voting Modernization Bond Act of 2002 authorizes the issuance of bonds in the amount of \$200,000,000 pursuant to the State General Obligation Bond Law for the purpose of assisting counties in the purchase of updated voting systems.

This bill would authorize a county to use fund moneys to contract and pay for research and development of a new voting system that has not been certified or conditionally approved by the Secretary of State,

as specified, and for the manufacture of the minimum number of voting system units, as specified.

(10) Existing law prohibits the Secretary of State, on and after January 1, 2005, from approving a direct recording electronic voting system unless the system has received federal qualification and includes an accessible voter verified paper audit trail.

This bill would prohibit a city or county from contracting for or purchasing a direct recording electronic voting system unless the system has been certified by the Secretary of State, and would require all direct recording electronic voting systems in use as of January 1, 2006, to have received federal qualification and include an accessible voter verified paper audit trail, as specified.

This bill would incorporate additional changes to be operative only if Assembly Bill 214 and this bill are both chaptered and become effective January 1, 2014.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The heading of Division 19 (commencing with
2 Section 19001) of the Elections Code is amended to read:

3
4 DIVISION 19. CERTIFICATION OF VOTING SYSTEMS
5

6 SEC. 2. Section 19006 is added to the Elections Code, to read:
7 19006. It is the intent of the Legislature that:

8 (a) All voting systems be certified or conditionally approved
9 by the Secretary of State, independent of voluntary federal
10 qualification or certification, before they are used in future elections
11 to ensure that the voting systems have the ability to meet accuracy,
12 accessibility, and security standards.

13 (b) The Secretary of State adopt and publish testing standards
14 that meet or exceed federal voluntary standards set by the United
15 States Election Assistance Commission or its successor agency.

16 (c) The Secretary of State study and encourage the development
17 of voting systems that use nonproprietary source code and that are
18 easy to audit.

1 (d) A local jurisdiction may use available public funds to
2 purchase and maintain any certified or conditionally approved
3 voting system or part of a voting system.

4 (e) California receive the benefits of the publicly funded
5 development of a nonproprietary voting system in the state.

6 (f) A local jurisdiction may use available public funds to
7 research and develop a nonproprietary voting system that uses
8 disclosed source codes, including the manufacture of a limited
9 number of voting system units, for use in a pilot program or for
10 submission to the Secretary of State for certification.

11 SEC. 3. Section 19100 of the Elections Code is amended to
12 read:

13 19100. The Secretary of State shall study and adopt regulations
14 governing the use of voting machines, voting devices, vote
15 tabulating devices, and ballot marking systems, and shall be
16 responsible for certifying voting systems for use in this state.

17 SEC. 4. Section 19101 of the Elections Code is amended and
18 renumbered to read:

19 19103. The Chairperson of the Senate Standing Committee on
20 Elections and Constitutional Amendments and the Chairperson of
21 the Assembly Standing Committee on Elections and Redistricting
22 shall meet with the Secretary of State and assist the Secretary of
23 State to the extent that the participation is not incompatible with
24 their positions as Members of the Legislature. For purposes of this
25 division, the chairpersons of the committees named shall constitute
26 a joint interim legislative committee on the subject of this chapter
27 and Chapter 3 (commencing with Section 19200) and shall have
28 the powers and duties imposed upon those committees by the Joint
29 Rules of the Senate and Assembly.

30 SEC. 5. Section 19101 is added to the Elections Code, to read:

31 19101. (a) The Secretary of State shall adopt and publish
32 voting system standards and regulations governing the use of voting
33 systems. The Secretary of State shall adopt standards that meet or
34 exceed federal voluntary voting system guidelines set forth by the
35 United States Election Assistance Commission or its successor
36 agency. Until state standards are adopted, the Voluntary Voting
37 System Guidelines Draft Version 1.1, as submitted to the United
38 States Election Assistance Commission on August 31, 2012, shall
39 be used as state standards to the extent that they do not conflict

1 with this code. The Secretary of State may require additional testing
2 to ensure that voting systems meet the requirements of this code.

3 (b) Voting system standards adopted by the Secretary of State
4 pursuant to subdivision (a) shall include, but not be limited to, all
5 of the following requirements:

6 (1) The machine or device and its software shall be suitable for
7 the purpose for which it is intended.

8 (2) The system shall preserve the secrecy of the ballot.

9 (3) The system shall be safe from fraud or manipulation.

10 (4) The system shall be accessible to voters with disabilities
11 pursuant to Section 19242 and applicable federal laws.

12 (5) The system shall be accessible to voters who require
13 assistance in a language other than English if the language is one
14 in which a ballot or ballot materials are required to be made
15 available to voters pursuant to Section 14201 and applicable federal
16 laws.

17 SEC. 6. Section 19102 of the Elections Code is amended and
18 renumbered to read:

19 19104. The Secretary of State may investigate any alleged
20 violation of this code or the Secretary of State's regulations with
21 the power to subpoena all necessary persons and records.

22 SEC. 6.5. Section 19102 of the Elections Code is amended and
23 renumbered to read:

24 19105. The Secretary of State may investigate any alleged
25 violation of this code or the Secretary of State's regulations with
26 the power to subpoena all necessary persons and records.

27 SEC. 7. Section 19102 is added to the Elections Code, to read:

28 19102. The Secretary of State shall study the performance of
29 voting systems in use in the state.

30 SEC. 8. Section 19103 of the Elections Code is amended and
31 renumbered to read:

32 19212. (a) (1) No later than 10 business days after the
33 Secretary of State certifies or conditionally approves the use of a
34 new or updated voting system, the vendor or county seeking
35 certification or approval of the voting system shall cause an exact
36 copy of the approved source code for each component of the voting
37 system, including complete build and configuration instructions
38 and related documents for compiling the source code into object
39 code, to be transferred directly from either the United States
40 Election Assistance Commission or the voting system testing

1 agency that evaluated the voting system and is approved by the
2 Secretary of State, and deposited into an approved escrow facility.

3 (2) No later than 10 business days after the Secretary of State
4 certifies or conditionally approves a new or updated ballot marking
5 system, the vendor or county seeking certification or approval of
6 the ballot marking system shall cause an exact copy of the approved
7 source code for each component of the ballot marking system,
8 including complete build and configuration instructions and related
9 documents for compiling the source code into object code, to be
10 deposited into an approved escrow facility.

11 (b) The Secretary of State shall adopt regulations relating to all
12 of the following:

13 (1) The definition of source code components of a voting system
14 or ballot marking system, including source code for all firmware
15 and software of the voting system or ballot marking system.
16 Firmware and software shall include commercial off-the-shelf or
17 other third-party firmware and software that is available and able
18 to be disclosed by the vendor or county seeking certification or
19 approval of a voting system or ballot marking system.

20 (2) Specifications for the escrow facility, including security and
21 environmental specifications necessary for the preservation of the
22 voting system or ballot marking system source codes.

23 (3) Procedures for submitting voting system or ballot marking
24 system source codes.

25 (4) Criteria for access to voting system or ballot marking system
26 source codes.

27 (5) Requirements for the applicant to include in the materials
28 deposited in escrow build and configuration instructions and
29 documents so that a neutral third party may create, from the source
30 codes in escrow, executable object codes identical to the code
31 installed on certified or conditionally approved voting systems or
32 ballot marking systems.

33 (c) The Secretary of State shall have reasonable access to the
34 materials placed in escrow, under any of the following
35 circumstances:

36 (1) In the course of an investigation or prosecution regarding
37 vote counting or ballot marking equipment or procedures.

38 (2) Upon a finding by the Secretary of State that an escrow
39 facility or escrow company is unable or unwilling to maintain
40 materials in escrow in compliance with this section.

1 (3) In order to fulfill the provisions of this chapter related to the
2 examination and certification or conditional approval of voting
3 systems or ballot marking systems.

4 (4) In order to verify that the software on a voting system is
5 identical to the certified or conditionally approved version.

6 (5) For any other purpose deemed necessary to fulfill the
7 provisions of this code or Section 12172.5 of the Government
8 Code.

9 (d) The Secretary of State may seek injunctive relief requiring
10 the elections officials, approved escrow facility, or any vendor or
11 manufacturer of a voting system or part of a voting system to
12 comply with this section and related regulations. Venue for a
13 proceeding under this section shall be exclusively in Sacramento
14 County.

15 (e) This section applies to all elections.

16 SEC. 9. The heading of Chapter 3 (commencing with Section
17 19200) of Division 19 of the Elections Code is amended to read:

18
19 CHAPTER 3. CERTIFICATION OF VOTING SYSTEMS
20

21 SEC. 10. The heading of Article 1 (commencing with Section
22 19200) of Chapter 3 of Division 19 of the Elections Code is
23 amended to read:
24

25 Article 1. Procedures for Certification of Voting Systems
26

27 SEC. 11. Section 19200.5 of the Elections Code is amended
28 and renumbered to read:

29 19204. The Secretary of State shall not certify or conditionally
30 approve any voting system that includes features that permit a
31 voter to produce, and leave the polling place with, a copy or
32 facsimile of the ballot cast by the voter at that polling place.

33 SEC. 12. Section 19201 of the Elections Code is amended and
34 renumbered to read:

35 19202. (a) Except as authorized by Section 19209, a voting
36 system, in whole or in part, shall not be used unless it has been
37 certified or conditionally approved by the Secretary of State prior
38 to any election at which it is to be used.

39 (b) A voting system that has been tested and approved for use
40 in all elections by the Secretary of State before January 1, 2014,

1 shall be deemed certified or conditionally approved by the
2 Secretary of State and may be used in an election subject to any
3 conditions placed on the use of the voting system by the Secretary
4 of State before January 1, 2014, including conditions imposed in
5 the reapproval documents issued by the Secretary of State in 2007
6 and 2008 following the Top-to-Bottom Review, and its subsequent
7 revisions. The voting systems described in this subdivision shall
8 remain subject to review and decertification by the Secretary of
9 State at any time pursuant to Section 19232.

10 (c) A vendor or county that has submitted a voting system for
11 federal qualification before August 1, 2013, upon obtaining federal
12 qualification before January 1, 2015, may request approval of the
13 voting system from the Secretary of State based on the examination
14 and review requirements in place before January 1, 2014.

15 (d) A jurisdiction shall not purchase or contract for a voting
16 system unless it has been certified or conditionally approved by
17 the Secretary of State.

18 (e) Notwithstanding subdivision (d), a local jurisdiction may
19 contract and pay for the following:

20 (1) Research and development of a new voting system that has
21 not been certified or conditionally approved by the Secretary of
22 State and uses only nonproprietary software and firmware with
23 disclosed source code, except for unmodified commercial
24 off-the-shelf software and firmware, as defined in paragraph (1)
25 of subdivision (a) of Section 19209.

26 (2) Manufacture of the minimum number of voting system units
27 reasonably necessary for either of the following purposes:

28 (A) To test and seek certification or conditional approval of the
29 voting system pursuant to Sections 19210 to 19214, inclusive.

30 (B) To test and demonstrate the capabilities of the voting system
31 in a pilot program pursuant to paragraph (2) of subdivision (b) of,
32 and subdivision (c) of, Section 19209.

33 SEC. 13. Section 19201 is added to the Elections Code, to read:

34 19201. (a) The Secretary of State may grant conditional
35 approval to a voting system or part of a voting system under either
36 of the following circumstances:

37 (1) A voting system or part of a voting system was decertified
38 as a result of a review by the Secretary of State pursuant to Section
39 19232.

1 (2) A certified voting system or part of that voting system is
2 modified to comply with voting system standards or changes in
3 statute.

4 (b) The Secretary of State may withdraw conditional approval
5 at any time pursuant to Section 19232.

6 SEC. 14. Section 19202 of the Elections Code is amended and
7 renumbered to read:

8 19210. (a) A person, corporation, or public agency owning or
9 having an interest in the sale or acquisition of a voting system or
10 a part of a voting system may apply to the Secretary of State for
11 certification that includes testing and examination of the applicant's
12 system by a state-approved testing agency or expert technicians
13 and a report on the findings, which shall include the accuracy and
14 efficiency of the voting system. As part of its application, the
15 applicant shall notify the Secretary of State in writing of any known
16 defect, fault, or failure of the version of the hardware, software,
17 or firmware of the voting system or a part of the voting system
18 submitted. The Secretary of State shall not begin his or her
19 certification process until he or she receives a completed
20 application. The applicant shall also notify the Secretary of State
21 in writing of any defect, fault, or failure of the version of the
22 hardware, software, or firmware of the voting system or a part of
23 the voting system submitted that is discovered after the application
24 is submitted and before the Secretary of State submits the report
25 required by Section 19213. The Secretary of State shall complete
26 his or her certification process without undue delay.

27 (b) The Secretary of State shall publish and make publicly
28 available on his or her Internet Web site a quarterly report of
29 regulatory activities related to voting systems.

30 (c) As used in this article:

31 (1) "Defect" means any flaw in the hardware or documentation
32 of a voting system that could result in a state of unfitness for use
33 or nonconformance to the manufacturer's specifications or
34 applicable law.

35 (2) "Failure" means a discrepancy between the external results
36 of the operation of any software or firmware in a voting system
37 and the manufacturer's product requirements for that software or
38 firmware or applicable law.

1 (3) “Fault” means a step, process, or data definition in any
2 software or firmware in a voting system that is incorrect under the
3 manufacturer’s program specification or applicable law.

4 SEC. 15. Section 19203 of the Elections Code is amended and
5 renumbered to read:

6 19223. The Secretary of State shall use a state-approved testing
7 agency or expert technicians to examine and test voting systems
8 or parts of voting systems proposed for use or sale in this state.
9 He or she shall furnish a complete report of the findings of the
10 examination and testing to the Governor and the Attorney General.

11 SEC. 16. Section 19204 of the Elections Code is amended and
12 renumbered to read:

13 19211. (a) Prior to publishing his or her decision to certify,
14 conditionally approve, or withhold certification of a voting system
15 or part of a voting system, the Secretary of State shall provide for
16 a 30-day public review period and conduct a public hearing to give
17 persons interested an opportunity to review testing and examination
18 reports and express their views for or against certification or
19 conditional approval of the voting system.

20 (b) The Secretary of State shall give notice of the public review
21 period and hearing in the manner prescribed in Section 6064 of
22 the Government Code in a newspaper of general circulation
23 published in Sacramento County. The Secretary of State shall also
24 provide notice of the hearing on his or her Internet Web site. The
25 Secretary of State shall transmit written notice of the hearing, at
26 least 14 days prior to the public review period and hearing, to each
27 county elections official, to any person that the Secretary of State
28 believes will be interested in the public review period and hearing,
29 and to any person who requests, in writing, notice of the public
30 review period and hearing.

31 (c) The decision of the Secretary of State to certify, conditionally
32 approve, or withhold certification of a voting system or part of a
33 voting system shall be in writing and shall state the findings of the
34 Secretary of State. The decision shall be open to public inspection.

35 SEC. 17. Section 19205 of the Elections Code is repealed.

36 SEC. 18. Section 19206 of the Elections Code is repealed.

37 SEC. 19. Section 19206 is added to the Elections Code, to read:

38 19206. Except as authorized by Section 19209, both of the
39 following apply:

1 (a) If more than one voting system is used to count ballots, the
2 names of candidates shall, insofar as possible, be placed on the
3 primary voting system.

4 (b) If more than one voting system or a combination of a voting
5 system and paper ballots is used to count ballots, a single ballot
6 measure or the candidates for a single office may not be split
7 between voting systems or between a voting system and paper
8 ballots.

9 SEC. 20. Section 19207 of the Elections Code is amended and
10 renumbered to read:

11 19213. Within 60 days after the completion of the examination
12 of a voting system, the Secretary of State shall make publicly
13 available a report stating whether the voting system has been
14 certified or conditionally approved, or whether certification has
15 been withheld. The report shall also contain a written or printed
16 description and drawings and photographs that clearly identify the
17 machine or device and its mechanical operation.

18 SEC. 21. Section 19208 of the Elections Code is repealed.

19 SEC. 22. Section 19209 of the Elections Code is amended and
20 renumbered to read:

21 19214. Within 10 days after issuing and filing a certification
22 decision and associated testing reports, the Secretary of State shall
23 make available to the public a full and complete copy of the
24 certification report and all associated documentation, except that
25 portions of the report or documentation that contain information
26 that the Secretary of State determines to be confidential or
27 proprietary shall not be made publicly available. The Secretary of
28 State shall also notify the board of supervisors and elections official
29 of each county of the availability of the report and associated
30 documentation.

31 SEC. 23. Section 19210 of the Elections Code is amended and
32 renumbered to read:

33 19207. The governing board may adopt for use at elections
34 any kind of voting system, any combination of voting systems, or
35 any combination of a voting system and paper ballots, provided
36 that the voting system or systems involved have been certified or
37 conditionally approved by the Secretary of State or specifically
38 authorized by law pursuant to Section 19209.

39 SEC. 24. Section 19211 of the Elections Code is amended and
40 renumbered to read:

1 19209. (a) For purposes of this section, the following terms
2 have the following meanings:

3 (1) “Commercial off-the-shelf” means mass-produced, readily
4 available hardware devices, including card readers, printers, or
5 personal computers, and their firmware or software products,
6 including operating systems, programming language compilers,
7 or database management systems.

8 (2) “Incorrect in part” means a full manual tally of the votes
9 cast on the pilot system would reveal rates of error in the pilot
10 system tally that, if extrapolated to the entire contest, would alter
11 the electoral outcome.

12 (3) “Partial risk-limiting audit” means a procedure that
13 guarantees a large minimum chance of a full manual tally of the
14 votes cast on the pilot system if the electoral outcome is incorrect
15 in part.

16 (4) “Risk-limiting audit” means a procedure that ensures a large,
17 predetermined minimum chance of requiring a full manual tally
18 whenever a full manual tally would show an electoral outcome
19 that differs from the outcome reported by the voting system for
20 the audited contest.

21 (b) The governing board, without formally adopting a voting
22 system, may provide for the experimental use of the voting system
23 in a pilot program held in one or more precincts at a single election
24 or, in the case of a special election, the special primary election
25 and the special general election, if the voting system complies with
26 either of the following:

27 (1) The voting system is certified or conditionally approved
28 prior to its experimental use.

29 (2) The voting system meets all of the following requirements:

30 (A) Uses only software and firmware with disclosed source
31 code, except for unmodified commercial off-the-shelf software
32 and firmware.

33 (B) Meets the requirements of subdivision (b) of Section 19101.

34 (C) Meets the requirements of the regulations adopted by the
35 Secretary of State pursuant to subdivision (g).

36 (D) Implements risk-limiting audits.

37 (c) A voting system that meets all of the requirements of
38 paragraph (2) of subdivision (b) need not be certified or
39 conditionally approved prior to its experimental use in a pilot
40 program if the number of voting system units deployed in the pilot

1 program is limited to the number necessary to test and demonstrate
2 the capabilities of the voting system in a limited number of
3 precincts or locations, including a prudent number of reserve units
4 to ensure that sufficient working units will be available to conduct
5 the pilot program. In no event shall the number of voting system
6 units exceed 50 percent of the estimated number of units that would
7 be required for full deployment of the voting system at every
8 polling place and early voting site in a statewide election
9 throughout the jurisdiction. Capabilities that may be taken into
10 account in determining the number of voting system units
11 reasonably necessary to test and demonstrate the capabilities of
12 the voting system include, but are not limited to, all of the
13 following:

14 (1) The capability of the voting system to accommodate voting
15 in all languages in which the jurisdiction is required to provide
16 ballots under applicable state and federal laws.

17 (2) The capability of the voting system to accommodate voting
18 by persons with a broad range of physical and cognitive disabilities,
19 as required by applicable state and federal laws.

20 (3) The current and projected number of voting-eligible
21 individuals in the jurisdiction.

22 (4) The geography and distribution of the population in the
23 jurisdiction.

24 (d) No later than nine months before the election at which the
25 pilot program of a voting system is proposed to be conducted, the
26 governing board shall submit to the Secretary of State a plan for
27 the pilot program. The Secretary of State shall approve or reject
28 the plan no later than three months after receipt of the plan.

29 (e) The votes cast on a voting system during a pilot program
30 pursuant to subdivision (b) shall be subject to risk-limiting audits.

31 (1) For each contest conducted entirely on the pilot voting
32 system, the jurisdiction conducting the pilot program shall conduct
33 a risk-limiting audit with at least a 90-percent chance of requiring
34 a full manual tally of the contest whenever a full manual tally
35 would show an outcome that differs from the outcome reported
36 by the pilot voting system.

37 (2) For each contest conducted partially on the pilot voting
38 system, the jurisdiction conducting the pilot program shall conduct
39 a partial risk-limiting audit of the portion of the contest in which
40 the voters cast their votes on the pilot voting system, with at least

1 a 90-percent chance of requiring a full manual tally of all votes
2 cast using the pilot voting system whenever the outcome is
3 incorrect in part.

4 (3) (A) If a risk-limiting audit of a contest leads to a full manual
5 tally of all of the ballots cast in the contest, then the contest
6 outcome according to that manual tally shall become the official
7 result.

8 (B) If a partial risk-limiting audit of a contest leads to a full
9 manual tally of the ballots cast using the pilot voting system, the
10 vote counts according to that manual tally shall replace the vote
11 counts reported by the pilot voting system for the purpose of
12 determining the official contest results.

13 (4) Risk-limiting audit procedures shall comply with all other
14 requirements in regulations adopted by the Secretary of State
15 pursuant to subdivision (g).

16 (f) Upon completion of the pilot program, the governing board
17 shall notify the Secretary of State in writing of any defect, fault,
18 or failure of the hardware, software, or firmware of the voting
19 system or a part of the voting system.

20 (g) A voting system pilot program shall not be conducted in a
21 legally binding election without the prior approval of the Secretary
22 of State. The Secretary of State shall adopt and publish regulations
23 governing voting system pilot programs.

24 SEC. 25. Section 19212 of the Elections Code is amended and
25 renumbered to read:

26 19208. The governing board may provide for the payment of
27 the cost of the voting system equipment in any manner and by any
28 method as it deems best for local interests, and also may for that
29 purpose issue bonds, certificates of indebtedness, or other
30 obligations that shall be a charge on the county or city. The bonds,
31 certificates, or other obligations may be issued with or without
32 interest, payable at any time as the authorities may determine, but
33 shall not be issued or sold at less than par. The governing board
34 may enter into lease agreements or lease-purchase agreements for
35 the use of equipment.

36 SEC. 26. Section 19212.5 of the Elections Code is amended
37 and renumbered to read:

38 19215. (a) If a voting system or a part of a voting system has
39 been certified or conditionally approved by the Secretary of State
40 or has been federally qualified, the vendor or, in cases where the

1 system is publicly owned, the jurisdiction shall notify the Secretary
2 of State and all local elections officials who use the system in
3 writing of any defect, fault, or failure of the hardware, software,
4 or firmware of the voting system or a part of the voting system
5 within 30 calendar days after the vendor learns of the defect, fault,
6 or failure.

7 (b) After receiving written notification of a defect, fault, or
8 failure pursuant to subdivision (a), the Secretary of State shall
9 notify the United States Election Assistance Commission or its
10 successor agency of the problem as soon as practicable so as to
11 present a reasonably complete description of the problem. The
12 Secretary of State shall subsequently submit a report regarding the
13 problem to the United States Election Assistance Commission or
14 its successor agency. The report shall include any report regarding
15 the problem submitted to the Secretary of State.

16 SEC. 27. Section 19213 of the Elections Code is amended and
17 renumbered to read:

18 19216. If a voting system or a part of a voting system has been
19 certified or conditionally approved by the Secretary of State, it
20 shall not be changed or modified until the Secretary of State has
21 been notified in writing and has determined that the change or
22 modification does not impair its accuracy and efficiency sufficient
23 to require a reexamination and recertification, or conditional
24 approval, pursuant to this article. The Secretary of State may adopt
25 rules and regulations governing the procedures to be followed in
26 making his or her determination as to whether the change or
27 modification impairs accuracy or efficiency.

28 SEC. 28. Section 19214 of the Elections Code is amended and
29 renumbered to read:

30 19217. The Secretary of State may seek injunctive and
31 administrative relief if a voting system or a part of a voting system
32 has been compromised by the addition or deletion of hardware,
33 software, or firmware without prior approval or is defective due
34 to a known hardware, software, or firmware defect, fault, or failure
35 that has not been disclosed pursuant to Section 19210 or 19215.

36 SEC. 29. Section 19214.5 of the Elections Code is amended
37 and renumbered to read:

38 19218. (a) The Secretary of State may seek all of the following
39 relief for an unauthorized change in hardware, software, or

1 firmware in a voting system certified or conditionally approved
2 in California:

3 (1) A civil penalty from the offending party or parties, not to
4 exceed ten thousand dollars (\$10,000) per violation. For purposes
5 of this subdivision, each voting system component found to contain
6 the unauthorized hardware, software, or firmware shall be
7 considered a separate violation. A penalty imposed pursuant to
8 this subdivision shall be apportioned 50 percent to the county in
9 which the violation occurred, if applicable, and 50 percent to the
10 office of the Secretary of State for purposes of bolstering voting
11 systems security efforts.

12 (2) Immediate commencement of proceedings to withdraw
13 certification or conditional approval for the voting system in
14 question.

15 (3) Prohibiting the manufacturer or vendor of a voting system
16 from doing elections-related business in the state for one, two, or
17 three years.

18 (4) Refund of all moneys paid by a local agency for a voting
19 system or a part of a voting system that is compromised by an
20 unauthorized change or modification, whether or not the voting
21 system has been used in an election.

22 (5) Any other remedial actions authorized by law to prevent
23 unjust enrichment of the offending party.

24 (b) (1) The Secretary of State may seek all of the following
25 relief for a known but undisclosed defect, fault, or failure in a
26 voting system or part of a voting system certified or conditionally
27 approved in California:

28 (A) Refund of all moneys paid by a local agency for a voting
29 system or part of a voting system that is defective due to a known
30 but undisclosed defect, fault, or failure, whether or not the voting
31 system has been used in an election.

32 (B) A civil penalty from the offending party or parties, not to
33 exceed fifty thousand dollars (\$50,000) per violation. For purposes
34 of this subdivision, each defect, fault, or failure shall be considered
35 a separate violation. A defect, fault, or failure constitutes a single
36 violation regardless of the number of voting system units in which
37 the defect, fault, or failure is found.

38 (C) In addition to any other penalties or remedies established
39 by this section, the offending party or parties shall be liable in the
40 amount of one thousand dollars (\$1,000) per day after the

1 applicable deadline established in Section 19215 until the required
2 disclosure is filed with the Secretary of State.

3 (2) A penalty imposed pursuant to subparagraph (B) or (C) of
4 paragraph (1) shall be deposited in the General Fund.

5 (c) Before seeking any measure of relief under this section, the
6 Secretary of State shall hold a public hearing. The Secretary of
7 State shall give notice of the hearing in the manner prescribed by
8 Section 6064 of the Government Code in a newspaper of general
9 circulation published in Sacramento County. The Secretary of
10 State also shall transmit written notice of the hearing, at least 30
11 days prior to the hearing, to each county elections official, the
12 offending party or parties, a person that the Secretary of State
13 believes will be interested in the hearing, and a person who
14 requests, in writing, notice of the hearing.

15 (d) The decision of the Secretary of State to seek relief under
16 this section shall be in writing and state his or her findings. The
17 decision shall be open to public inspection.

18 SEC. 30. Section 19215 of the Elections Code is amended and
19 renumbered to read:

20 19219. (a) The Secretary of State may seek injunctive relief
21 requiring an elections official, or any vendor or manufacturer of
22 a voting machine, voting system, or vote tabulating device, to
23 comply with the requirements of this code, the regulations of the
24 Secretary of State, and the specifications for voting machines,
25 voting devices, vote tabulating devices, and any software used for
26 each, including the programs and procedures for vote tabulating
27 and testing.

28 (b) Venue for a proceeding under this section shall be
29 exclusively in Sacramento County.

30 SEC. 31. Section 19216 of the Elections Code is amended and
31 renumbered to read:

32 19203. The Secretary of State shall not certify or conditionally
33 approve a voting system or a part of a voting system that uses
34 paper ballots unless the paper used for the ballots is of sufficient
35 quality that it maintains its integrity and readability throughout
36 the retention period specified in Chapter 4 (commencing with
37 Section 17300) of Division 17.

38 SEC. 32. Section 19217 of the Elections Code is amended and
39 renumbered to read:

40 19205. A voting system shall comply with all of the following:

1 (a) No part of the voting system shall be connected to the
2 Internet at any time.

3 (b) No part of the voting system shall electronically receive or
4 transmit election data through an exterior communication network,
5 including the public telephone system, if the communication
6 originates from or terminates at a polling place, satellite location,
7 or counting center.

8 (c) No part of the voting system shall receive or transmit
9 wireless communications or wireless data transfers.

10 SEC. 33. The heading of Article 2 (commencing with Section
11 19220) of Chapter 3 of Division 19 of the Elections Code is
12 amended and renumbered to read:

13
14 Article 3. Inspection of Certified and Conditionally Approved
15 Voting Systems
16

17 SEC. 34. Section 19220 of the Elections Code is amended and
18 renumbered to read:

19 19230. The elections official of any county or city using a
20 voting system shall inspect the machines or devices at least once
21 every two years to determine their accuracy. Any county or city
22 using leased or rented equipment shall determine if the equipment
23 has been inspected for accuracy within the last two years before
24 using it for any election. The inspection shall be made in
25 accordance with regulations adopted and promulgated by the
26 Secretary of State. The elections official shall certify the results
27 of the inspection to the Secretary of State.

28 SEC. 35. Article 2 (commencing with Section 19220) is added
29 to Chapter 3 of Division 19 of the Elections Code, to read:

30
31 Article 2. Voting System Testing Agencies
32

33 19220. For purposes of this division, “state-approved testing
34 agency” means a person or entity that is authorized by the Secretary
35 of State to conduct the testing and examination of a voting system
36 in connection with certification or conditional approval of the
37 voting system pursuant to this division.

38 19221. The Secretary of State shall do all of the following:

39 (a) Publish requirements for the approval of state-approved
40 testing agencies that are authorized to conduct the testing and

1 examination of voting systems. Until the requirements are
2 published, federally accredited voting system laboratories shall be
3 used to conduct testing and examination.

4 (b) Approve and publish a list of authorized state-approved
5 testing agencies.

6 19222. The person, corporation, or public agency applying for
7 certification of a voting system is responsible for all costs
8 associated with the testing of the voting system.

9 ~~19223. The Secretary of State may contract with one or more~~
10 ~~expert technicians to assist with the certification of a voting system,~~
11 ~~including testing and examination of the voting system.~~

12 SEC. 36. Section 19221 of the Elections Code is amended and
13 renumbered to read:

14 19231. (a) If the Secretary of State has reason to believe that
15 a local inspection of equipment is not adequate, he or she may
16 cause the equipment to be reexamined, at any time prior to six
17 months before a statewide election, to ensure that the voting system
18 or parts of the voting system perform to adopted standards and
19 tabulate votes accurately.

20 (b) For the purpose of reexamining voting equipment, the
21 Secretary of State may use state-approved testing agencies or expert
22 technicians at the cost of the elections official.

23 (c) The Secretary of State shall furnish a complete report of the
24 findings to the Governor, to the Attorney General, to each county
25 elections official, to the chairpersons of the elections committees
26 of the Assembly and Senate, and to the manufacturer of the
27 equipment.

28 SEC. 37. Section 19222 of the Elections Code is amended and
29 renumbered to read:

30 19232. The Secretary of State shall review voting systems
31 periodically to determine if they are defective, obsolete, or
32 otherwise unacceptable. The Secretary of State has the right to
33 withdraw his or her certification or conditional approval previously
34 granted under this chapter of any voting system or part of a voting
35 system should it be defective or prove unacceptable after such
36 review. Six months' notice shall be given before withdrawing
37 certification or conditional approval unless the Secretary of State
38 for good cause shown makes a determination that a shorter notice
39 period is necessary. Any withdrawal by the Secretary of State of
40 his or her previous certification or conditional approval of a voting

1 system or part of a voting system shall not be effective as to any
2 election conducted within six months of that withdrawal.

3 SEC. 38. Section 19223 of the Elections Code is amended and
4 renumbered to read:

5 19233. The Secretary of State shall conduct random audits of
6 the software installed on direct recording electronic voting systems,
7 as defined in Section 19271, to ensure that the installed software
8 is identical to the software that has been approved for use on that
9 voting system. The Secretary of State shall take steps to ensure
10 that the process for conducting random audits does not intentionally
11 cause a direct recording electronic voting system to become more
12 vulnerable to any unauthorized changes to the software that has
13 been approved for its use.

14 SEC. 39. The heading of Article 2.5 (commencing with Section
15 19225) of Chapter 3 of Division 19 of the Elections Code is
16 amended and renumbered to read:

17
18 Article 4. Accessible Voting Systems
19

20 SEC. 40. Section 19225 of the Elections Code is amended and
21 renumbered to read:

22 19240. It is the intent of the Legislature that California voting
23 system standards and elections comply with the provisions of the
24 federal Help America Vote Act of 2002 (42 U.S.C. Sec. 15301 et
25 seq.) that require voting systems be accessible for individuals with
26 disabilities, including nonvisual accessibility for the blind and
27 visually impaired, in a manner that provides the same opportunity
28 for access and participation, including privacy and independence,
29 as provided to other voters who are not disabled.

30 SEC. 41. Section 19226 of the Elections Code is amended and
31 renumbered to read:

32 19241. As used in this article:

33 (a) “Access” means the ability to receive, use, select, and
34 manipulate data and operate controls included in voting technology
35 and systems.

36 (b) “Nonvisual” means synthesized speech, braille, and other
37 output methods that do not require sight.

38 SEC. 42. Section 19227 of the Elections Code is amended and
39 renumbered to read:

1 19242. (a) The Secretary of State shall adopt and publish rules
2 and regulations governing any voting technology and systems used
3 by the state or any political subdivision that provide voters with
4 disabilities the access required under the federal Help America
5 Vote Act of 2002 (42 U.S.C. Sec. 15301 et seq.).

6 (b) At each polling place, at least one voting unit certified or
7 conditionally approved by the Secretary of State shall provide
8 voters with disabilities the access required under the federal Help
9 America Vote Act of 2002 (42 U.S.C. Sec. 15301 et seq.).

10 (c) A local agency is not required to comply with subdivision
11 (b) in an election in which a candidate for federal office does not
12 appear on the ballot unless sufficient funds are available to
13 implement that provision. Funds received from the proceeds of
14 the Voting Modernization Bond Act of 2002 (Article 5
15 (commencing with Section 19250)), from federal funds made
16 available to purchase new voting systems, or from any other source
17 except the General Fund, shall be used for that purpose.

18 SEC. 43. Section 19227.5 of the Elections Code is amended
19 and renumbered to read:

20 19243. In requiring access for voters with disabilities pursuant
21 to this article, the Secretary of State shall obtain recommendations
22 from representatives of blind consumer organizations, experts in
23 accessible software and hardware design, and any other individual
24 or organization the Secretary of State determines to be appropriate.

25 SEC. 44. Section 19228 of the Elections Code is amended and
26 renumbered to read:

27 19244. Compliance with this article in regard to voting
28 technology and systems purchased prior to the effective date of
29 this article shall be achieved at the time of procurement of an
30 upgrade or replacement of existing voting equipment or systems.

31 SEC. 45. Section 19229 of the Elections Code is amended and
32 renumbered to read:

33 19245. (a) A person injured by a violation of this article may
34 maintain an action for injunctive relief to enforce this article.

35 (b) An action for injunctive relief shall be commenced within
36 four years after the cause of action accrues.

37 (c) For purposes of this section, a cause of action for a
38 continuing violation accrues at the time of the latest violation.

39 SEC. 46. Section 19229.5 of the Elections Code is amended
40 and renumbered to read:

19246. This article does not apply to voting by vote by mail ballot.

SEC. 47. The heading of Article 3 (commencing with Section 19230) of Chapter 3 of Division 19 of the Elections Code is amended and renumbered to read:

Article 5. Voting Modernization Bond Act of 2002
(Shelley-Hertzberg Act)

SEC. 48. Section 19230 of the Elections Code is amended and renumbered to read:

19250. This article shall be known and may be cited as the Voting Modernization Bond Act of 2002 (Shelley-Hertzberg Act).

SEC. 49. Section 19231 of the Elections Code is amended and renumbered to read:

19251. The State General Obligation Bond Law (Chapter 4 (commencing with Section 16720) of Part 3 of Division 4 of Title 2 of the Government Code), except as otherwise provided herein, is adopted for the purpose of the issuance, sale, and repayment of, and otherwise providing with respect to, the bonds authorized to be issued by this article, and the provisions of that law are included in this article as though set out in full.

SEC. 50. Section 19232 of the Elections Code is amended and renumbered to read:

19252. As used in this article:

(a) “Board” means the Voting Modernization Board, established pursuant to Section 19256.

(b) “Bond” means a state general obligation bond issued pursuant to this article adopting the provisions of the State General Obligation Bond Law.

(c) “Bond act” means this article authorizing the issuance of state general obligation bonds and adopting the State General Obligation Bond Law by reference.

(d) “Committee” means the Voting Modernization Finance Committee, established pursuant to Section 19253.

(e) “Fund” means the Voting Modernization Fund, created pursuant to subdivision (b) of Section 19254.

(f) “Voting system” means any voting machine, voting device, or vote tabulating device that does not use prescored punch card ballots.

1 SEC. 51. Section 19233 of the Elections Code is amended and
2 renumbered to read:

3 19253. (a) The Voting Modernization Finance Committee is
4 hereby established for the purpose of authorizing the issuance and
5 sale, pursuant to the State General Obligation Bond Law, of the
6 bonds authorized by this article.

7 (b) The committee consists of the Controller, the Director of
8 Finance, and the Treasurer, or their designated representatives, all
9 of whom shall serve without compensation, and a majority of
10 whom shall constitute a quorum. The Treasurer shall serve as
11 chairperson of the committee. A majority of the committee may
12 act for the committee.

13 (c) For purposes of this article, the Voting Modernization
14 Finance Committee is “the committee” as that term is used in the
15 State General Obligation Bond Law.

16 SEC. 52. Section 19234 of the Elections Code is amended and
17 renumbered to read:

18 19254. (a) The committee may create a debt or debts, liability
19 or liabilities, of the State of California, in the aggregate amount
20 of not more than two hundred million dollars (\$200,000,000),
21 exclusive of refunding bonds, in the manner provided herein for
22 the purpose of creating a fund to assist counties in the purchase of
23 updated voting systems.

24 (b) The proceeds of bonds issued and sold pursuant to this article
25 shall be deposited in the Voting Modernization Fund, which is
26 hereby established.

27 (c) A county is eligible to apply to the board for fund money if
28 it meets all of the following requirements:

29 (1) The county has purchased a new voting system after January
30 1, 1999, and is continuing to make payments on that system on
31 the date that this article becomes effective.

32 (2) The county matches fund moneys at a ratio of one dollar
33 (\$1) of county moneys for every three dollars (\$3) of fund moneys.

34 (3) The county has not previously requested fund money for
35 the purchase of a new voting system. Applications for expansion
36 of an existing system or components related to a previously
37 certified or conditionally approved application shall be accepted.

38 (d) (1) Fund moneys shall only be used to purchase systems
39 certified or conditionally approved by the Secretary of State.

(2) A county may use fund moneys to contract and pay for the following:

(A) Research and development of a new voting system that has not been certified or conditionally approved by the Secretary of State and uses only nonproprietary software and firmware with disclosed source code, except for unmodified commercial off-the-shelf software and firmware, as defined in paragraph (1) of subdivision (a) of Section 19209.

(B) Manufacture of the minimum number of voting system units reasonably necessary for either of the following purposes:

(i) To test and seek certification or conditional approval for the voting system pursuant to Sections 19210 to 19214, inclusive.

(ii) To test and demonstrate the capabilities of the voting system in a pilot program pursuant to paragraph (2) of subdivision (b) of, and subdivision (c) of, Section 19209.

(3) Fund moneys shall not be used to purchase a voting system that uses prescored punch card ballots.

(e) Any voting system purchased using bond funds that does not require a voter to directly mark on the ballot must produce, at the time the voter votes his or her ballot or at the time the polls are closed, a paper version or representation of the voted ballot or of all the ballots cast on a unit of the voting system. The paper version shall not be provided to the voter but shall be retained by elections officials for use during the 1 percent manual recount or other recount, audit, or contest.

SEC. 53. Section 19234.5 of the Elections Code is amended and renumbered to read:

19255. The Legislature may amend subdivisions (c) and (d) of Section 19254 and Section 19256 by a statute, passed in each house of the Legislature by rollcall vote entered in the respective journals, by not less than two-thirds of the membership in each house concurring, if the statute is consistent with, and furthers the purposes of, this article.

SEC. 54. Section 19235 of the Elections Code is amended and renumbered to read:

19256. The Voting Modernization Board is hereby established and designated the “board” for purposes of the State General Obligation Bond Law, and for purposes of administering the Voting Modernization Fund. The board consists of five members, three selected by the Governor and two selected by the Secretary of

1 State. The board shall have the authority to reject any application
2 for fund money it deems inappropriate, excessive, or that does not
3 comply with the intent of this article. A county whose application
4 is rejected shall be allowed to submit an amended application.

5 SEC. 55. Section 19236 of the Elections Code is amended and
6 renumbered to read:

7 19257. (a) All bonds authorized by this article, when duly sold
8 and delivered as provided herein, constitute valid and legally
9 binding general obligations of the State of California, and the full
10 faith and credit of the state is hereby pledged for the punctual
11 payment of both principal and interest thereof. The bonds issued
12 pursuant to this article shall be repaid within 10 years from the
13 date they are issued.

14 (b) There shall be collected annually, in the same manner and
15 at the same time as other state revenue is collected, a sum of
16 money, in addition to the ordinary revenues of the state, sufficient
17 to pay the principal of, and interest on, the bonds as provided
18 herein. All officers required by law to perform any duty in regard
19 to the collection of state revenues shall collect this additional sum.

20 (c) On the dates on which funds are remitted pursuant to Section
21 16676 of the Government Code for the payment of the then
22 maturing principal of, and interest on, the bonds in each fiscal
23 year, there shall be returned to the General Fund all of the money
24 in the fund, not in excess of the principal of, and interest on, any
25 bonds then due and payable. If the money so returned on the
26 remittance dates is less than the principal and interest then due and
27 payable, the balance remaining unpaid shall be returned to the
28 General Fund out of the fund as soon as it shall become available,
29 together with interest thereon from the dates of maturity until
30 returned, at the same rate of interest as borne by the bonds,
31 compounded semiannually. This subdivision does not grant any
32 lien on the fund or the moneys therein to holders of any bonds
33 issued under this article. However, this subdivision shall not apply
34 in the case of any debt service that is payable from the proceeds
35 of any refunding bonds. For purposes of this subdivision, "debt
36 service" means the principal (whether due at maturity, by
37 redemption, or acceleration), premium, if any, or interest payable
38 on any date to any series of bonds.

39 SEC. 56. Section 19237 of the Elections Code is amended and
40 renumbered to read:

1 19258. Notwithstanding Section 13340 of the Government
2 Code, there is hereby continuously appropriated from the General
3 Fund, for purposes of this article, a sum of money that will equal
4 both of the following:

5 (a) That sum annually necessary to pay the principal of, and the
6 interest on, the bonds issued and sold as provided herein, as that
7 principal and interest become due and payable.

8 (b) That sum necessary to carry out Section 19259, appropriated
9 without regard to fiscal years.

10 SEC. 57. Section 19238 of the Elections Code is amended and
11 renumbered to read:

12 19259. For purposes of this article, the Director of Finance
13 may, by executive order, authorize the withdrawal from the General
14 Fund of a sum of money not to exceed the amount of the unsold
15 bonds that have been authorized by the committee to be sold
16 pursuant to this article. Any sums withdrawn shall be deposited
17 in the fund. All moneys made available under this section to the
18 board shall be returned by the board to the General Fund, plus the
19 interest that the amounts would have earned in the Pooled Money
20 Investment Account, from the sale of bonds for the purpose of
21 carrying out this article.

22 SEC. 58. Section 19239 of the Elections Code is amended and
23 renumbered to read:

24 19260. The board may request the Pooled Money Investment
25 Board to make a loan from the Pooled Money Investment Account,
26 in accordance with Section 16312 of the Government Code, for
27 the purpose of carrying out this article. The amount of the request
28 shall not exceed the amount of unsold bonds which the committee
29 has, by resolution, authorized to be sold for the purpose of carrying
30 out this article. The board shall execute whatever documents are
31 required by the Pooled Money Investment Board to obtain and
32 repay the loan. Any amounts loaned shall be deposited in the fund
33 to be allocated by the board in accordance with this article.

34 SEC. 59. Section 19240 of the Elections Code is amended and
35 renumbered to read:

36 19261. Upon request of the board, supported by a statement
37 of its plans and projects approved by the Governor, the committee
38 shall determine whether to issue any bonds authorized under this
39 article in order to carry out the board's plans and projects and, if
40 so, the amount of bonds to be issued and sold. Successive issues

1 of bonds may be authorized and sold to carry out these plans and
2 projects progressively, and it is not necessary that all of the bonds
3 be issued or sold at any one time.

4 SEC. 60. Section 19241 of the Elections Code is amended and
5 renumbered to read:

6 19262. (a) The committee may authorize the Treasurer to sell
7 all or any part of the bonds authorized by this article at the time
8 or times established by the Treasurer.

9 (b) Whenever the committee deems it necessary for an effective
10 sale of the bonds, the committee may authorize the Treasurer to
11 sell any issue of bonds at less than their par value, notwithstanding
12 Section 16754 of the Government Code. However, the discount
13 on the bonds shall not exceed 3 percent of the par value thereof.

14 SEC. 61. Section 19242 of the Elections Code is amended and
15 renumbered to read:

16 19263. Out of the first money realized from the sale of bonds
17 as provided by this article, there shall be redeposited in the General
18 Obligation Bond Expense Revolving Fund, established by Section
19 16724.5 of the Government Code, the amount of all expenditures
20 made for purposes specified in that section, and this money may
21 be used for the same purpose and repaid in the same manner
22 whenever additional bond sales are made.

23 SEC. 62. Section 19243 of the Elections Code is amended and
24 renumbered to read:

25 19264. Any bonds issued and sold pursuant to this article may
26 be refunded in accordance with Article 6 (commencing with
27 Section 16780) of Chapter 4 of Part 3 of Division 2 of Title 2 of
28 the Government Code. The approval of the voters for the issuance
29 of bonds under this article includes approval for the issuance of
30 bonds issued to refund bonds originally issued or any previously
31 issued refunding bonds.

32 SEC. 63. Section 19244 of the Elections Code is amended and
33 renumbered to read:

34 19265. Notwithstanding any provision of the bond act, if the
35 Treasurer sells bonds under this article for which bond counsel
36 has issued an opinion to the effect that the interest on the bonds is
37 excludable from gross income for purposes of federal income tax,
38 subject to any conditions which may be designated, the Treasurer
39 may establish separate accounts for the investment of bond
40 proceeds and for the earnings on those proceeds, and may use those

1 proceeds or earnings to pay any rebate, penalty, or other payment
2 required by federal law or take any other action with respect to the
3 investment and use of bond proceeds required or permitted under
4 federal law necessary to maintain the tax-exempt status of the
5 bonds or to obtain any other advantage under federal law on behalf
6 of the funds of this state.

7 SEC. 64. Section 19245 of the Elections Code is amended and
8 renumbered to read:

9 19266. The Legislature hereby finds and declares that,
10 inasmuch as the proceeds from the sale of bonds authorized by
11 this article are not “proceeds of taxes” as that term is used in Article
12 XIII B of the California Constitution, the disbursement of these
13 proceeds is not subject to the limitations imposed by Article XIII B.

14 SEC. 65. The heading of Article 4 (commencing with Section
15 19250) of Chapter 3 of Division 19 of the Elections Code is
16 amended and renumbered to read:

17
18 Article 6. Direct Recording Electronic Voting Systems
19

20 SEC. 66. Section 19250 of the Elections Code is amended and
21 renumbered to read:

22 19270. (a) The Secretary of State shall not certify or
23 conditionally approve a direct recording electronic voting system
24 unless the system includes an accessible voter verified paper audit
25 trail.

26 (b) On and after January 1, 2006, a city or county shall not
27 contract for or purchase a direct recording electronic voting system
28 unless the system has been certified or conditionally approved for
29 use by the Secretary of State.

30 (c) As of January 1, 2006, all direct recording electronic voting
31 systems in use on that date, regardless of the date it was contracted
32 for or purchased, shall have received federal qualification and
33 include an accessible voter verified paper audit trail. If the direct
34 recording electronic voting system does not include an accessible
35 voter verified paper audit trail, the system shall be replaced or
36 modified to include an accessible voter verified paper audit trail.

37 (d) All direct recording electronic voting systems shall include
38 a method by which a voter may electronically verify, through a
39 nonvisual method, the information that is contained on the paper
40 record copy of that voter’s ballot.

1 (e) A paper record copy that is printed by a voter verified paper
2 audit trail component shall be printed in the same language that
3 the voter used when casting his or her ballot on the direct recording
4 electronic voting system. For languages that lack a written form,
5 the paper record copy shall be printed in English.

6 SEC. 67. Section 19251 of the Elections Code is amended and
7 renumbered to read:

8 19271. As used in this article:

9 (a) “Accessible” means that the information provided on the
10 paper record copy from the voter verified paper audit trail
11 mechanism is provided or conveyed to voters via both a visual and
12 a nonvisual method, such as through an audio component.

13 (b) “Direct recording electronic voting system” means a voting
14 system that records a vote electronically and does not require or
15 permit the voter to record his or her vote directly onto a tangible
16 ballot.

17 (c) “Voter verified paper audit trail” means a component of a
18 direct recording electronic voting system that prints a
19 contemporaneous paper record copy of each electronic ballot and
20 allows each voter to confirm his or her selections before the voter
21 casts his or her ballot.

22 (d) “Federal qualification” means the system has been certified,
23 if applicable, by means of qualification testing by a nationally
24 recognized test laboratory and has met or exceeded the minimum
25 requirements set forth in the Performance and Text Standards for
26 Punch Card, Mark Sense, and Direct Recording Electronic Voting
27 Systems, or in any successor voluntary standard document,
28 developed and promulgated by the Federal Election Commission,
29 the Election Assistance Commission, or the National Institute of
30 Standards and Technology.

31 (e) “Paper record copy” means an auditable document printed
32 by a voter verified paper audit trail component that corresponds
33 to the voter’s electronic vote and lists the contests on the ballot
34 and the voter’s selections for those contests. A paper record copy
35 is not a ballot.

36 (f) “Parallel monitoring” means the testing of a randomly
37 selected sampling of voting equipment on election day designed
38 to simulate actual election conditions to confirm that the system
39 is registering votes accurately.

SEC. 68. Section 19252 of the Elections Code is amended and renumbered to read:

19272. To the extent that they are available for expenditure for the purposes of this article, federal funds or moneys from the Voting Modernization Fund, created pursuant to subdivision (b) of Section 19254, shall be used. No moneys from the General Fund shall be expended for the purposes of this article.

SEC. 69. Section 19253 of the Elections Code is amended and renumbered to read:

19273. (a) On a direct recording electronic voting system, the electronic record of each vote shall be considered the official record of the vote, except as provided in subdivision (b).

(b) (1) The voter verified paper audit trail shall be considered the official paper audit record and shall be used for the required 1-percent manual tally described in Section 15360 and any full recount or post-election audit.

(2) The voter verified paper audit trail shall govern if there is any difference between it and the electronic record during a 1-percent manual tally, full recount, or post-election audit.

SEC. 70. Section 19254 of the Elections Code is amended and renumbered to read:

19274. The Secretary of State shall not certify or conditionally approve a direct recording electronic voting system unless the paper used for its voter verified paper audit trail is of sufficient quality that it maintains its integrity and readability throughout the retention period specified in Chapter 4 (commencing with Section 17300) of Division 17.

SEC. 71. Section 19255 of the Elections Code is amended and renumbered to read:

19275. (a) For each statewide election, the Secretary of State shall conduct parallel monitoring of each direct recording electronic voting system on which ballots will be cast. This section shall only apply to precincts that have more than one direct recording electronic voting system.

(b) The results of the parallel monitoring shall be made available prior to the certification of the election.

SEC. 72. The heading of Chapter 3.5 (commencing with Section 19260) of Division 19 of the Elections Code is amended to read:

1 CHAPTER 3.5. CERTIFICATION OF BALLOT MARKING SYSTEMS

2
3 SEC. 73. Section 19260 of the Elections Code is amended and
4 renumbered to read:

5 19280. The Secretary of State shall not certify or conditionally
6 approve a ballot marking system, or part of a ballot marking
7 system, unless it fulfills the requirements of this code and the
8 regulations of the Secretary of State.

9 SEC. 74. Section 19261 of the Elections Code is amended and
10 renumbered to read:

11 19281. (a) A ballot marking system, in whole or in part, shall
12 not be used unless it has been certified or conditionally approved
13 by the Secretary of State prior to the election at which it is to be
14 first used.

15 (b) All other uses of a ballot marking system shall be subject
16 to the provisions of Section 19202.

17 SEC. 75. Section 19262 of the Elections Code is amended and
18 renumbered to read:

19 19284. (a) A person, corporation, or public agency owning or
20 having an interest in the sale or acquisition of a ballot marking
21 system or a part of a ballot marking system may apply to the
22 Secretary of State for certification or conditional approval that
23 includes testing and examination of the applicant's system and a
24 report on the findings, which shall include the accuracy and
25 efficiency of the ballot marking system. As part of its application,
26 the applicant of a ballot marking system or a part of a ballot
27 marking system shall notify the Secretary of State in writing of
28 any known defect, fault, or failure of the version of the hardware,
29 software, or firmware of the ballot marking system or a part of the
30 ballot marking system submitted. The Secretary of State shall not
31 begin his or her certification process until he or she receives a
32 completed application from the applicant of the ballot marking
33 system or a part of the ballot marking system. The applicant shall
34 also notify the Secretary of State in writing of any defect, fault, or
35 failure of the version of the hardware, software, or firmware of
36 the ballot marking system or a part of the ballot marking system
37 submitted that is discovered after the application is submitted and
38 before the Secretary of State submits the report required by Section
39 19288. The Secretary of State shall complete his or her examination
40 without undue delay.

(b) After receiving an applicant's written notification of a defect, fault, or failure, the Secretary of State shall notify the United States Election Assistance Commission or its successor entity of the problem as soon as practicable so as to present a reasonably complete description of the problem. The Secretary of State shall subsequently submit a report regarding the problem to the United States Election Assistance Commission or its successor entity. The report shall include any report regarding the problem submitted to the Secretary of State by the applicant.

(c) As used in this chapter:

(1) "Defect" means any flaw in the hardware or documentation of a ballot marking system that could result in a state of unfitness for use or nonconformance to the manufacturer's specifications or applicable law.

(2) "Failure" means a discrepancy between the external results of the operation of any software or firmware in a ballot marking system and the manufacturer's product requirements for that software or firmware or applicable law.

(3) "Fault" means a step, process, or data definition in any software or firmware in a ballot marking system that is incorrect under the manufacturer's program specification or applicable law.

SEC. 76. Section 19263 of the Elections Code is amended and renumbered to read:

19285. The Secretary of State shall use a state-approved testing agency or expert technicians to examine ballot marking systems proposed for use or sale in this state. He or she shall furnish a complete report of the findings of the examination and testing to the Governor and the Attorney General.

SEC. 77. Section 19264 of the Elections Code is amended and renumbered to read:

19287. (a) Prior to publishing his or her decision to certify, conditionally approve, or withhold certification of a ballot marking system, the Secretary of State shall provide for a 30-day public review period and conduct a public hearing to give interested persons an opportunity to review testing and examination reports and express their views for or against certification or conditional approval of the ballot marking system.

(b) The Secretary of State shall give notice of the public review period and hearing in the manner prescribed in Section 6064 of the Government Code in a newspaper of general circulation

published in Sacramento County. The Secretary of State shall also provide notice of the hearing on his or her Internet Web site. The Secretary of State shall transmit written notice of the hearing, at least 14 days prior to the public review period and hearing, to each county elections official, to any person that the Secretary of State believes will be interested in the public review period and hearing, and to any person who requests, in writing, notice of the public review period and hearing.

(c) The decision of the Secretary of State to certify, conditionally approve, or withhold certification of a ballot marking system shall be in writing and shall state the findings of the Secretary of State. The decision shall be open to public inspection.

SEC. 78. Section 19265 of the Elections Code is repealed.

SEC. 79. Section 19266 of the Elections Code is repealed.

SEC. 80. Section 19267 of the Elections Code is amended and renumbered to read:

19288. Within 60 days after the completion of the examination of a ballot marking system, the Secretary of State shall make publicly available a report stating whether the ballot marking system has been certified or conditionally approved, or whether certification has been withheld.

SEC. 81. Section 19268 of the Elections Code is repealed.

SEC. 82. Section 19269 of the Elections Code is amended and renumbered to read:

19289. Within 10 days after issuing and filing a certification decision and associated testing reports, the Secretary of State shall make available to the public a full and complete copy of the certification report and all associated documentation, except that portions of the report or documentation that contain information that the Secretary of State determines to be confidential or proprietary shall not be made publicly available. The Secretary of State shall notify the board of supervisors and elections official of each county of the availability of the report and associated documentation.

SEC. 83. Section 19270 of the Elections Code is amended and renumbered to read:

19290. (a) If a ballot marking system has been certified or conditionally approved by the Secretary of State, the vendor or, in cases where the system is publicly owned, the jurisdiction shall notify the Secretary of State and all local elections officials who

1 use the system in writing of any defect, fault, or failure of the
2 hardware, software, or firmware of the system or a part of the
3 system within 30 calendar days after the vendor or jurisdiction
4 learns of the defect, fault, or failure.

5 (b) After receiving written notification of a defect, fault, or
6 failure pursuant to subdivision (a), the Secretary of State shall
7 notify the United States Election Assistance Commission or its
8 successor entity of the problem as soon as practicable so as to
9 present a reasonably complete description of the problem. The
10 Secretary of State shall subsequently submit a report regarding the
11 problem to the United States Election Assistance Commission or
12 its successor entity. The report shall include any report regarding
13 the problem submitted to the Secretary of State.

14 SEC. 84. Section 19271 of the Elections Code is amended and
15 renumbered to read:

16 19291. If a ballot marking system has been certified or
17 conditionally approved by the Secretary of State, it shall not be
18 changed or modified until the Secretary of State has been notified
19 in writing and has determined that the change or modification does
20 not impair its accuracy and efficiency sufficient to require a
21 reexamination and recertification or reapproval pursuant to this
22 chapter. The Secretary of State may adopt rules and regulations
23 governing the procedures to be followed in making his or her
24 determination as to whether the change or modification impairs
25 accuracy or efficiency.

26 SEC. 85. Section 19272 of the Elections Code is amended and
27 renumbered to read:

28 19292. The Secretary of State may seek injunctive and
29 administrative relief if a ballot marking system has been
30 compromised by the addition or deletion of hardware, software,
31 or firmware without prior approval or is defective due to a known
32 hardware, software, or firmware defect, fault, or failure that has
33 not been disclosed pursuant to Section 19284 or 19290.

34 SEC. 86. Section 19273 of the Elections Code is amended and
35 renumbered to read:

36 19293. (a) The Secretary of State may seek all of the following
37 relief for an unauthorized change in hardware, software, or
38 firmware in a ballot marking system certified or conditionally
39 approved in California:

1 (1) A civil penalty from the offending party or parties, not to
2 exceed ten thousand dollars (\$10,000) per violation. For purposes
3 of this subdivision, each ballot marking system component found
4 to contain the unauthorized hardware, software, or firmware shall
5 be considered a separate violation. A penalty imposed pursuant to
6 this subdivision shall be apportioned 50 percent to the county in
7 which the violation occurred, if applicable, and 50 percent to the
8 office of the Secretary of State for purposes of bolstering ballot
9 marking system security efforts.

10 (2) Immediate commencement of proceedings to withdraw
11 certification or conditional approval for the ballot marking system
12 in question.

13 (3) Prohibiting the manufacturer or vendor of a ballot marking
14 system from doing elections-related business in the state for one,
15 two, or three years.

16 (4) Refund of all moneys paid by a local agency for a ballot
17 marking system or a part of a ballot marking system that is
18 compromised by an unauthorized change or modification, whether
19 or not the ballot marking system has been used in an election.

20 (5) Any other remedial actions authorized by law to prevent
21 unjust enrichment of the offending party.

22 (b) (1) The Secretary of State may seek all of the following
23 relief for a known but undisclosed defect, fault, or failure in a
24 ballot marking system or part of a ballot marking system certified
25 or conditionally approved in California:

26 (A) Refund of all moneys paid by a local agency for a ballot
27 marking system or part of a ballot marking system that is defective
28 due to a known but undisclosed defect, fault, or failure, whether
29 or not the ballot marking system has been used in an election.

30 (B) A civil penalty from the offending party or parties, not to
31 exceed fifty thousand dollars (\$50,000) per violation. For purposes
32 of this subdivision, each defect, fault, or failure shall be considered
33 a separate violation. A defect, fault, or failure constitutes a single
34 violation regardless of the number of ballot marking system units
35 in which the defect, fault, or failure is found.

36 (C) In addition to any other penalties or remedies established
37 by this section, the offending party or parties shall be liable in the
38 amount of one thousand dollars (\$1,000) per day after the
39 applicable deadline established in Section 19290 until the required
40 disclosure is filed with the Secretary of State.

1 (2) A penalty imposed pursuant to subparagraph (B) or (C) of
2 paragraph (1) shall be deposited in the General Fund.

3 (c) Before seeking any measure of relief under this section, the
4 Secretary of State shall hold a public hearing. The Secretary of
5 State shall give notice of the hearing in the manner prescribed by
6 Section 6064 of the Government Code in a newspaper of general
7 circulation published in Sacramento County. The Secretary of
8 State also shall transmit written notice of the hearing, at least 30
9 days prior to the hearing, to each county elections official, the
10 offending party or parties, any persons that the Secretary of State
11 believes will be interested in the hearing, and any persons who
12 request, in writing, notice of the hearing.

13 (d) The decision of the Secretary of State to seek relief under
14 this section shall be in writing and state his or her findings. The
15 decision shall be open to public inspection.

16 SEC. 87. Section 19274 of the Elections Code is amended and
17 renumbered to read:

18 19294. (a) The Secretary of State may seek injunctive relief
19 requiring an elections official, or any vendor or manufacturer of
20 a ballot marking system, to comply with the requirements of this
21 code, the regulations of the Secretary of State, and the
22 specifications for the ballot marking system and its software,
23 including the programs and procedures for vote marking and
24 testing.

25 (b) Venue for a proceeding under this section shall be
26 exclusively in Sacramento County.

27 SEC. 88. Section 19275 of the Elections Code is amended and
28 renumbered to read:

29 19295. A ballot marking system or part of a ballot marking
30 system shall not do any of the following:

31 (a) Have the capability, including an optional capability, to use
32 a remote server to mark a voter's selections transmitted to the
33 server from the voter's computer via the Internet.

34 (b) Have the capability, including an optional capability, to store
35 any voter identifiable selections on any remote server.

36 (c) Have the capability, including the optional capability, to
37 tabulate votes.

38 SEC. 89. Section 19282 is added to the Elections Code, to read:

39 19282. The Secretary of State shall not certify or conditionally
40 approve any ballot marking system that includes features that

1 permit a voter to produce, and leave the polling place with, a copy
2 or facsimile of the ballot cast by the voter at that polling place.

3 SEC. 90. Section 19283 is added to the Elections Code, to read:

4 19283. (a) The Secretary of State shall adopt and publish
5 standards and regulations governing the use of ballot marking
6 systems. The Secretary of State may also adopt, in whole or in
7 part, voluntary federal ballot marking voting system standards
8 established by the United States Election Assistance Commission
9 or its successor agency.

10 (b) Ballot marking system standards adopted by the Secretary
11 of State pursuant to subdivision (a) shall include, but not be limited
12 to, all of the following requirements:

13 (1) The machine or device and its software shall be suitable for
14 the purpose for which it is intended.

15 (2) The ballot marking system shall preserve the secrecy of the
16 ballot.

17 (3) The ballot marking system shall be safe from fraud or
18 manipulation.

19 (4) The ballot marking system shall be accessible to voters with
20 disabilities and to voters who require assistance in a language other
21 than English if the language is one in which a ballot or ballot
22 materials are required to be made available to voters.

23 SEC. 91. Section 19286 is added to the Elections Code, to read:

24 19286. The person, corporation, or public agency applying for
25 certification of a ballot marking system is responsible for all costs
26 associated with the testing and examination of the ballot marking
27 system.

28 SEC. 92. Section 6.5 of this bill shall only become operative
29 if (1) this bill and Assembly Bill 214 are both enacted and become
30 effective on or before January 1, 2014, and (2) Assembly Bill 214
31 adds Section 19104 to the Elections Code, in which case Section
32 6 of this bill shall not become operative.